

# **IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

**IN RE:       AMENDMENT TO  
              COURT OF CHANCERY RULE 144**

This 21st day of June, 2005, IT IS HEREBY ORDERED that the Court of Chancery Rule 144 shall be amended by deleting Rule 144 in its entirety and substituting the following language which is, effective July 1, 2005.

Rule 144. Report; action by Court.

(a) As soon as the Master is ready to file a report, the Master may, before filing it, submit a draft thereof to each party for its inspection. Any party may take exception to the draft report by filing a notice of exception with the Office of the Register in Chancery or Wills, as appropriate, within seven days of the date of the draft report. Any party failing to file a notice of exception within seven days of the date of the draft report shall be deemed to have waived the right to review of the report, except insofar as the report is modified in response to the exceptions of other parties. Upon the filing of a notice of exception, the Master shall set a schedule for submission of memoranda on the exceptions. Such exceptions shall be first heard by the Master who shall be at liberty to amend the draft report. The draft report may be provided to the parties in writing or may be entered into the record from the bench. In the latter case, any party taking exception to the draft report shall order a transcript of the report from the record, which shall serve as the text of the report for purposes of review by the Master and the Court. The report shall contain findings of fact and conclusions of law sufficient to support the decision of the Master and to allow meaningful review by the Court.

If the Master files a draft report, the only exceptions which may be filed to the final report are those which were filed to the draft report and disallowed, plus exceptions to any changes from the draft report made in the final report.



Should the Master find that the interests of justice are best served thereby, he may omit a draft report, and designate his initial report as his final report. In that case, the Master shall notify the parties that his initial report, whether oral or written, is his final report, and the procedure for taking exception to that final report shall be as stated in this Rule.

The Master's final report shall be filed in the Office of the Register in Chancery or Wills, as appropriate, who shall give notice thereof to the parties interested. Any party wishing to take exception to the final report shall file a notice of exception with the Register within seven days of receiving notice that the final report has been filed. Any party not filing a notice of exception to the final report within seven days shall be deemed to have waived the right to review of the final report. After filing a notice of exception, a party shall file its opening brief in support of its exceptions with the appropriate Register within twenty days, in conformity with Rule 171. A party who opposes the exceptions shall file an answer to the exceptions within twenty days of the exceptant's opening brief and the exceptant shall file a reply within fifteen days of the answering brief. Answers and replies shall be filed as briefs in conformity with Rule 171.

In all instances in which the Master's report is based upon testimony taken on the record before the Master, proceedings on any exception to the final report shall be on that record, unless for good cause shown the Court elects to take additional testimony. If no exceptions are filed to the final report, the Court may in its discretion thereafter confirm such report on its own motion or set the matter down for further proceedings. If exceptions to the final report are filed, the Court may make such order as it deems appropriate. In either instance, upon the confirmation of a final report, the Court shall make such order thereon as it deems appropriate.

In any case where no party takes exception within the time periods allowed above to the draft report or to the final report, the report shall be deemed final and the master shall submit the report to the presiding Chancellor or Vice Chancellor for review and for entry of the report as an order of the Court, as appropriate.

The Court will review the legal and factual findings in the final report *de novo*.




(b) *Transcript.* (1) In all cases in which a party files exceptions to the Master's draft report, the party shall, with the notice of exception, serve and file a designation and request for the preparation of a transcript of those portions of the proceedings it deems necessary for inclusion in the record. A copy of the designation and request shall also be delivered to the court reporter. Any other party shall, within seven days thereafter, serve and file a designation and request a transcript of any additional portions of the proceedings that it deems necessary. Any party who fails to request a transcript under this subsection as to any portion of the proceedings waives any right to rely upon that portion of the proceedings in support of that party's arguments favoring or opposing an exception to the report. A transcript of the portions of the proceedings relied upon by the parties in support of their arguments favoring or opposing an exception to the draft or final report shall be submitted to the Master or the Court, as the case may be, in appendices to the parties' briefs.

(2) In any case where the Master determines, in his or her discretion, that a transcript of all or part of the proceedings is necessary in order to prepare the draft or final report, the Master shall require the parties to order such transcript. The Master may, at any stage of the proceedings, require the parties to file briefs citing to the transcript, and the parties' appendices shall include the portions of the transcript upon which the parties rely.

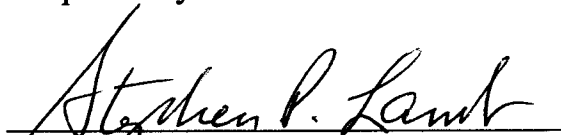
(c) *Voluntary Submission to Finality of Master's Report.* Subject to the approval and discretion of the Court, the parties to any case or proceeding may voluntarily agree to submit that case or proceeding or any claim, issue or matter arising in that case or proceeding to a Master for a final decision or resolution that shall not be subject to any further judicial review or appeal. Any such agreement must be embodied in a stipulation specifying the case, proceeding or matter to be so submitted to a Master, and the claims or issues to be resolved by a Master. The stipulation shall also expressly waive any right of any party to the case or proceeding to seek further judicial review of the decision of a Master, and contain an express representation that each party has consulted with his or her counsel and has expressly agreed to the submission of the case, proceeding or matter to a Master for a final decision or resolution which shall not be reviewable. The stipulation shall be executed by counsel for all parties to the case or proceeding approved and ordered by the Court, and filed with the Register in Chancery or the Register of Wills, as appropriate. In cases, proceedings or matters so submitted to a Master, Rules 136 through 147 will be applicable except that exceptions to the final report shall not be permitted. After the issuance of the Master's final report,





the Court shall enter a judgment or order implementing that final report, which shall not be subject to any further judicial review or appeal.

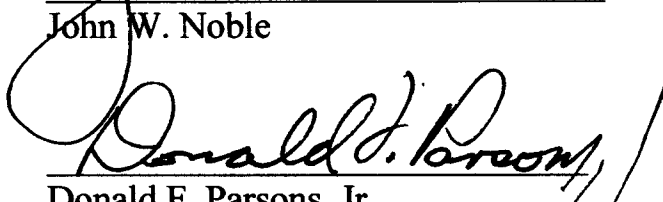
  
William B. Chandler III

Respectfully advised:

  
Stephen P. Lamb

  
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